Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Conference on Accounting Issues	)	WC Docket No. 02-269
	)	
	)	

COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION

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The United States Telecom Association (USTA),[1] through the undersigned and pursuant to the Public Notice issued by the Federal Communications Commission (FCC or Commission)[2] and pursuant to sections 1.415 and 1.419 of the Commission's rules,[3] hereby submits its comments on the comprehensive review of the Federal-State Joint Conference on Accounting Issues (Joint Conference) on regulatory accounting and related reporting requirements.

SUMMARY

The Commission's deregulatory efforts in the Phase 2 Order was movement in the right direction. It was movement toward meeting the deregulatory goal of the Act. This deregulatory movement should not be derailed now by reinstating or reconsidering the Commission's actions in the Phase 2 Order to eliminate and streamline certain regulatory accounting requirements or by implementing new accounting requirements. Rather, the Commission must continue its deregulatory efforts on accounting requirements by continuing to move forward with Phase 3 of its review of its accounting requirements. As the Commission moves forward with such

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[1] USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.
[2] Public Notice, DA 02-3449 (rel. Dec. 12, 2002) in which the Federal-State Joint Conference on Accounting Issues solicits comment on its comprehensive review of regulatory accounting and related reporting requirements (Public Notice).
[3] 47 C.F.R. §§1.415 and 1.419.

deregulation, it should be with a focus on tailoring its regulatory accounting requirements to the type of regulation to which a company is subject. As more carriers operate under a competitive market structure, fewer regulatory accounting requirements are necessary. In addition, the Commission should not attempt to use its authority to subject carriers to accounting requirements as a substitute or another means for detecting market failures. There are other government agencies and boards targeted with that responsibility and expertise. Finally, the Commission must be vigilant in repealing and modifying all regulations that are no longer necessary for a federal purpose. The Commission cannot implement or maintain a regulation simply because it might be useful or because the states claim it is necessary.

DISCUSSION

I. The Commission's Previous Actions To Deregulate Accounting Requirements Have Been Appropriate And Consistent With The Act.

The goals of the Telecommunications Act of 1996 (1996 Act) are prominently and clearly stated its preamble – "to promote competition and *reduce* regulation."[4] As part of the deregulatory focus of the 1996 Act, Section 11 was added to the Communications Act of 1934, as amended (Act), to focus on regulatory reform. Section 11 instituted a biennial review of all regulations that apply to providers of telecommunications services so that the Commission could make a determination whether any regulation was "no longer necessary in the public interest as a result of meaningful economic competition between providers of such service."[5] More importantly, Section 11 requires the Commission to "*repeal or modify* any regulation it determines to be no longer necessary in the public interest."[6]

[4] 1996 Act, Preamble (emphasis added).
[5] 47 U.S.C. §161(a)(2).
[6] 47 U.S.C. §161(b) (emphasis added).

Consistent with the requirements of Section 11, the Commission made significant progress toward deregulation of regulatory accounting requirements in its Phase 2 Order.[7] Those efforts should not be undone now. Equally important, the Commission should continue to move forward with its deregulatory efforts on regulatory accounting requirements in Phase 3 of that proceeding.[8] Reversing the deregulatory progress made in the Phase 2 Order would be inconsistent with the deregulatory goal of the Act, as would be any Commission decision not to move forward with its Phase 3 deregulatory efforts.

The critical need for deregulation becomes even more apparent as the telecommunications industry continues to become more competitive. As the competitive goal of the Act continues to be met, the Act's goal and promise of deregulation must also be met. Deregulation is also necessary for competitive reasons. The need and role for regulatory accounting is diminishing as many carriers have moved away from rates that are set by regulation and moved towards rates that are based on competition. Carriers that are not subject to rate regulation should not be required to comply with regulatory accounting requirements. Rather, these carriers should be permitted to operate under Generally Accepted Accounting Principals (GAAP) – a nationwide standard that can be easily followed by the entire telecommunications industry.

[7] *See 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2; Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting,* Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286, Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286, CC Docket Nos. 00-199, 97-212, 80-286, and 99-301 (rel. Nov. 5, 2001) (Phase 2 Order).

[8] Phase 3 of the Commission's 2000 biennial review of its accounting requirements was initiated by the Further Notice of Proposed Rulemaking, which was a part of the Phase 2 Order.

II. Regulatory Accounting Requirements That Were Eliminated Or Streamlined In The Phase 2 Order Should Not Be Reinstated Or Reconsidered. No New Regulatory Accounting Requirements Are Necessary To Support Current Regulatory Efforts And Goals.

In the Public Notice, the Joint Conference seeks comment on whether it should make changes to numerous accounting requirements that were eliminated or streamlined in the Phase 2 Order and whether incumbent local exchange carriers (ILECs) should be required to comply with additional accounting requirements. As stated previously, the deregulatory efforts of the Commission in its Phase 2 Order should not be undone and the deregulatory goal of the Act should not be undermined by reinstating accounting regulations that have already been eliminated, by reconsidering and reversing accounting regulations that have already been streamlined, or by imposing additional, new accounting regulations. USTA addresses below each specific accounting item on which the Joint Conference seeks comment.

The Commission should not reinstate the following regulatory accounts:

5230 Directory Revenues
6561 Depreciation Expense – Telephone Plant in Service[9]
6562 Depreciation Expense – Property Held for Future Telecommunications Use
6563.1 Amortization Expense – Capital Leases
6563.2 Amortization Expense – Leasehold Improvements
6564 Amortization Expense – Intangible
6565 Amortization Expense – Other

These accounts were eliminated in the Commission's Phase 2 Order[10] and there is no reason to reinstate them now.[11]

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[9] Although the Public Notice identified the account number for Depreciation Expense – Telephone Plant in Service as Account 6251, USTA believes the account number identified should have been Account 6561.
[10] *See* Phase 2 Order, paras. 36-38 and Appendix B – List of eliminated Class A accounts (pp. 87-88).
[11] Interestingly, the Commission noted when it eliminated these accounts that nothing it decided with regard to these accounts "restricts state commissions from receiving these data from carriers when state-specific reasons require them to do so" (*see* Phase 2 Order, para. 36) and that it expected that companies would "provide these records to state commissions, if needed" (*see* Phase 2 Order, para. 38).

The Joint Conference seeks comment on whether the Commission should reconsider consolidation of Accounts 6621 through 6623 for call completion services, number services, and customer services into one account, Account 6620 for services, and whether the Commission should create wholesale and retail subaccounts for such a consolidated account. Although the Commission originally ordered consolidation of these accounts, along with the wholesale/retail breakdown in the Phase 2 Order,[12] the Commission subsequently deferred such consolidation and wholesale/retail breakdown.[13] USTA recommends that the Commission should consolidate Accounts 6621 through 6623 into Account 6620, but does not recommend that the Commission implement a wholesale/retail breakdown for the consolidated account. Likewise, the Commission should not implement a wholesale/retail breakdown for any of the accounts even if it does not consolidate them. Requiring a wholesale/retail breakdown of Accounts 6621 (call completion services (*i.e.*, operator services)) and 6622 (number services (*i.e.*, directory assistance)) is simply not necessary because these services are not required to be offered at unbundled network element (UNE) rates.[14] Further, requiring a cost allocation of Account 6623 (customer services) (or Accounts 6620, 6621, or 6622) into a wholesale/retail breakdown is not consistent with the Commission's Part 32 accounting rules, is not useful for the states' purposes of developing UNE rates, and would require carriers to unnecessarily duplicate internal operating systems and procedures.

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[12] *See* Phase 2 Order, para. 41.

[13] *See Federal-State Joint Conference on Accounting Issues; 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers; Phase 2; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting*, Order, WC Docket No. 02-269, CC Docket Nos. 00-199, 80-286, 99-301, para. 5 (rel. Nov. 12, 2002) (Suspension Order).

[14] *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3892, para. 442 (1999).

FCC Rule Section 32.2(c), which addresses the basis of accounts in the Commission's rules on Uniform System of Accounts (USOA) for Telecommunications Companies, states that "because of the variety and continual changing of various cost allocation mechanisms, the financial accounts of a company should not reflect an *a priori* allocation of revenues, investments or expenses to products or services, jurisdictions or organizational structures."[15] In short, the Commission's regulated accounting system is based on carriers' actual costs, not a cost allocation process like that in the Commission's rules in Part 36 (Jurisdictional Separations Procedures) and Part 64, Subpart I (Allocation of Costs).

When the Commission originally ordered in its Phase 2 Order that the combined Account 6620 should include wholesale and retail subaccounts, it claimed that these subaccounts would "assist the states in developing UNE rates that properly reflect the costs of providing a wholesale service."[16] The reality is that the states already receive detailed studies to assist them in their UNE rate development process and that the receipt of wholesale/retail information from Account 6623 (or Accounts 6620, 6621, or 6622) is not necessary.

Finally, requiring carriers to implement wholesale/retail subaccounts for Accounts 6620, 6621, 6622, or 6623 would require them to either duplicate internal operating systems or to conduct studies as well as to rebook wholesale and retail dollars that have already been journalized. Again, booking an allocation is unnecessary work as it is not required by the Commission's Part 32 accounting rules. There would also be significant costs and lengthy lead times involved in duplicating systems and procedures to implement wholesale/retail subaccounts.

The Joint Conference also seeks comment on whether the Commission should reconsider changing the account title "Sheath Kilometer" to "Loop Sheath Kilometer" on Table II of the

[15] 47 U.S.C. §32.2(c).

ARMIS 43-07 report. Although the Commission originally ordered in its Phase 2 Order that this change in account title be made,[17] in a subsequent Order the Commission deferred implementation of this change.[18] The Commission should permanently reinstate the account title "Sheath Kilometer." Accordingly, USTA urges the Joint Conference to refrain from recommending that the Commission make the title change from "Sheath Kilometer" to "Loop Sheath Kilometer." In order to comply with such a change, carriers would be required to conduct manual, labor-intensive reviews of engineering plats to ascertain how the cable in the sheaths is used so that cable that is used for loops could be identified. Carriers' accounting records do not already contain this information. At least one USTA member has estimated that the cost of conducting the necessary reviews of the engineering plats would be more than $5.5 million. This is a significant financial outlay when the need for the specific loop information has never been stated.

With regard to the Joint Conference's request for comments on reconsideration of other changes adopted in the Phase 2 Order, USTA maintains that the Commission should not reconsider any changes adopted in the Phase 2 Order regarding affiliate transaction rules and the Commission should not reconsider any other changes adopted in the Phase 2 Order. Finally, the Joint Conference asks whether the Commission should add certain accounts – Optical Switching, Switching Software, Loop and Interoffice Transport, Interconnection – Revenue (with subaccounts for UNEs, Resale, Reciprocal Compensation, and Other Interconnection Arrangements), Interconnection – Expense (with subaccounts for UNEs, Resale, Reciprocal Compensation, and Other Interconnection Arrangements), Universal Service Support Revenue,

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[16] *See* Phase 2 Order, para. 64.
[17] *See* Phase 2 Order, para. 170.
[18] *See* Suspension Order, para. 5.

and Universal Service Support Expense – to the USOA. The Commission should not add these accounts to the USOA. Not only would such addition be contrary to the deregulatory goal of the Act, but requiring carriers to report this information is simply not necessary because the Commission already collects and summarizes an abundant amount of information to support regulatory efforts relating to UNE prices, interconnection arbitrations, universal service programs, market share, service quality, and cross-subsidization.

III. Regulatory Accounting Requirements Should Be Tailored To The Type of Regulation To Which A Company Is Subject And To The Company's Size.

Regulatory accounting was established when the only carriers that made up the telecommunications industry were ILECs and interexchange carriers (IXCs) and when all ILECs were regulated on rate-of-return basis, which involved frequent, long, and detailed rate-case proceedings. Today there are many different types of carriers that make up the telecommunications industry, but only ILECs are required to follow regulatory accounting. Other carriers' accounting practices are determined by GAAP.

The accounting system under which a carrier should operate should be based on the manner in which the carrier is regulated. More specifically, the accounting practices required for ILECs should conform to the different ways in which they are regulated. For example, price cap regulation no longer relies on booked costs. In other words, the link between costs and rates has been severed so that rates of price cap carriers do not vary according to their costs. Accordingly, price cap carriers should be subject to substantially fewer regulatory accounting requirements than they are today. Ideally, price cap carriers should only be required to report the same critical accounting information that all non-ILEC providers of telecommunications services report (e.g., information required in Forms 499 and 477). At a minimum, large price cap carriers should be subject to regulatory accounting requirements that are no more than those to which midsize price cap carriers are currently subject. In addition, 2% price cap carriers should be subject to no more accounting regulations than they already are.[19] Such a reduction in regulatory burdens for large price cap carriers would be a significant improvement.

In short, the competitive environment under which most telecommunications carriers operate should determine the accounting practices to which those carriers are subject. Moreover, in a competitive environment, no carrier should be required to provide information to regulators, which is not critical to ensure that facilities are adequate and charges are reasonable. The reduction and streamlining of accounting regulations that occurred in the Phase 2 Order were important steps in reducing the regulatory accounting requirements of price cap carriers according to the manner in which these carriers are currently regulated. Further reductions and streamlining of accounting regulations are necessary and the Commission should proceed with those efforts in the Phase 3 proceeding. As the telecommunications marketplace becomes more competitive, ILECs cannot continue to bear the burden of regulatory accounting requirements to which their competitors are not subject.

IV. Implementing Additional Regulatory Accounting Requirements Will Not Prevent Future Market Failures. Federal And State Regulators Should Not Duplicate The Functions Of The SEC Or FASB.

In a competitive environment, it is the market that determines whether a company succeeds or fails. Data reported by telecommunications carriers pursuant to regulatory accounting requirements does not predict a carrier's success or prevent its failure. It simply

[19] USTA urges the Commission to refrain from imposing any additional regulatory accounting requirements on mid-sized price cap carriers (*i.e.*, 2% carriers). The imposition of any such additional requirements would cause these carriers to devote additional resources to implementation of systems, which will be necessary to comply with reporting on such requirements when their resources could be better used to service customers and to compete for customers in the market. Notably, regulatory accounting relief that has already been provided to 2% carriers in the Phase 2 Order has resulted in no improprieties that would justify additional regulatory accounting requirements. Likewise, the same holds true for larger price cap carriers – there is no evidence that the regulatory accounting relief

provides a snapshot of that carrier's financial status at a given time. If a telecommunications carrier fails, the role of the regulator is to ensure that consumers can still obtain service and to ensure that the failure (or bankruptcy) of one carrier does not negatively impact or cause the failure (or bankruptcy) of other telecommunications carriers. Telecommunications regulators should not attempt to implement regulatory accounting requirements as a means of fulfilling their role of protecting consumers' access to service and protecting the financial viability of the remaining carriers in the market.[20] Potential and actual market failures should be monitored and detected through financial reporting to and analysis by the government agency – namely the Securities and Exchange Commission (SEC) – that is tasked with that responsibility.

Although revelations of abuse of the accounting rules used by publicly held and closely held companies (*i.e.*, GAAP) are very disturbing, they have no bearing whatsoever on the need for, or adequacy of, regulatory accounting requirements. The market failures that have been prominently featured in the past year have been the result of fraud and poor business planning, not a carrier's non-compliance with regulatory accounting and audit requirements. In fact, those telecommunications carriers that have experienced failures (or bankruptcies) in the past year were never subject to the Commission's regulatory accounting and audit requirements. Accordingly, targeting the Commission's accounting and audit requirements as a means to prevent future market failures will do nothing to solve such problems or to punish the carriers that committed fraud or operated under poor business plans. Increasing regulatory accounting

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afforded to them in the Phase 2 Order has resulted in any improprieties that would justify additional regulatory accounting requirements.

[20] Likewise, telecommunications regulators should not require carriers to provide accounting information relating to the viability of a merged carrier in anticipation of a merger. Such a requirement would cost carriers money and time to implement and comply with such accounting measures, all of which are unnecessary if carriers have no plans to and do not actually merge. Such requirements may be unnecessary even if carriers do merge. Only after carriers announce their intent to merge should the Commission determine whether any additional accounting information is necessary from such carriers.

requirements for ILECs will not prevent these types of failures. Again, these types of failures are meant to be monitored and detected by the SEC and general accounting practices (or GAAP).

The SEC is uniquely situated to ascertain and address market failures. "The primary mission of the . . . SEC is to protect investors and maintain the integrity of the securities markets."[21] In addition, the accounting scandals of the past year prompted passage of the Sarbanes-Oxley Act of 2002, which implemented numerous provisions to assist the SEC in its efforts to protect investors and maintain the integrity of the markets. The Sarbanes-Oxley Act addressed certification requirements, compensation matters, protections against insider trading and fraud, audit and reporting requirements, and self-policing. Further, the SEC's responsibilities are carried out by a staff who are trained, subject matter experts on the securities market.

There are also regulatory boards that establish and monitor the accounting procedures under which companies regulated by the SEC operate. Notably, the role of the Financial Accounting Standards Board (FASB) "is to establish and improve standards of financial accounting and reporting for the guidance and education of the public, including issuers, auditors, and users of financial information."[22]

With the expertise of the SEC and FASB, there is no need for federal or state telecommunications regulators to duplicate their functions or efforts. The functions and efforts of the SEC and FASB are targeted according to their expertise to monitor, detect, and help prevent market failures. The Commission's role and expertise lies elsewhere. Moreover, any attempt by the Commission to duplicate the SEC and FASB functions would necessitate a significant increase in the Commission's staff. Such duplication is simply not justified.

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[21] *See* http://www.sec.gov/about/whatwedo.shtml#intro.

Certainly telecommunications regulators may use publicly available reports and information collected by agencies such as the SEC to check the financial health of the telecommunications industry, however, as noted previously, the role of telecommunications regulators – at least with regard to telecommunications carriers that experience market failures – is to ensure that consumers can still obtain service and to ensure that the failure of one carrier does not negatively impact or cause the failure of other carriers. Importantly, telecommunications regulators can play a critical role in minimizing the harm of one carrier's market failure on other carriers by allowing carriers that provide services to other carriers to revise their tariffs with provisions that protect their financial viability from payment failures of carriers that have experienced market failures (or bankruptcies).[23]

Any recommendation by the Joint Conference that the Commission should increase its accounting regulations, particularly on ILECs, will be contrary to the Act's explicit deregulatory goal. Moreover, such a recommendation would unnecessarily duplicate the responsibilities of other government agencies and boards without any added benefit. Yet, if the Joint Conference fosters reasoned discourse among state and federal regulators to promote continued reform –

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[22] *See* http://www.fasb.org/

[23] *See Verizon Petition for Emergency Declaratory and Other Relief*, Comments of the United States Telecom Association, WC Docket No. 02-202 (Aug. 15, 2002); *Verizon Petition for Emergency Declaratory and Other Relief*, Reply Comments of the United States Telecom Association, WC Docket No. 02-202 (Aug. 22, 2002); *The Verizon Telephone Companies Tariff FCC Nos. 1, 11, 14 and 16, Transmittal No. 226*, Rebuttal Comments of the United States Telecom Association, WC Docket No. 02-317 (Nov. 19, 2002); *National Exchange Carrier Association, Inc. Tariff FCC No. 5, Transmittal No. 951*, Rebuttal Comments of the United States Telecom Association, WC Docket No. 02-340 (Dec. 12, 2002); *National Exchange Carrier Association, Inc. Tariff No. 5, Transmittal No. 952*, Rebuttal Comments of the United States Telecom Association, WC Docket No. 02-356 (Dec. 23, 2002); *Ameritech Operating Companies Tariff FCC No. 2, Transmittal No. 1312; Nevada Bell Telephone Companies Tariff 1, Transmittal No. 20; Pacific Bell Telephone Company FCC Tariff No. 1, Transmittal No. 77; Southern New England Telephone Companies Tariff FCC No. 29, Transmittal No. 772; Southwestern Bell Telephone Company FCC Tariff No. 73, Transmittal No. 2906*, Rebuttal Comments of the United States Telecom Association, WC Docket No. 02-319 (Nov. 21, 2002); *Ex Parte* Letter to Marlene H. Dotch, Secretary, FCC from Indra Sehdev Chalk, USTA, regarding *Madison River Telephone Company, LLC Tariff FCC No. 1, Transmittal No. 9*, WC Docket No. 02-371 (Jan. 17, 2003).

elimination and streamlining – of regulatory accounting requirements, the Act's deregulatory goal will be advanced and ILECs will obtain necessary and promised regulatory relief.

V. The Commission Does Not Have Authority To Maintain Regulatory Requirements Solely For The Benefit Of The States Nor Does It Have Authority To Require States To Fulfill Their Regulatory Mandates.

The Act specifically limits the regulatory authority and reach of the Commission to matters of interstate and foreign commerce in communication.[24] More clearly, the Act prohibits the Commission from exercising jurisdiction over intrastate communication service.[25] The Act's unquestionable delineation of the responsibilities of the Commission establishes that federal and state telecommunications regulators each have their own jurisdictional responsibilities. Devolving from this separation in responsibilities is the fundamental premise that the Commission cannot implement or maintain regulations solely for the purpose or benefit of the states. Such an attempt on the part of the Commission would be an unauthorized extension of its regulatory power into the state arena.

When the Commission adopted its Phase 2 Order, it determined that certain regulatory accounting requirements were no longer necessary, pursuant to the Act's requirement that the Commission conduct a biennial review of its regulations to ascertain what regulations are "no longer necessary in the public interest as the result of meaningful economic competition between providers of" telecommunications service.[26] Accordingly, these regulations were no longer necessary for the regulatory purposes of the Commission's jurisdiction (*i.e.*, interstate and

[24] *See* 47 U.S.C. §151 ("For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States . . . communication service with adequate facilities at reasonable charges . . .").
[25] *See* 47 U.S.C. 152(b) ("Except as provided in sections 223 through 227, inclusive, and section 332, and subject to the provisions of section 301 of title VI, nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier . . .") .
[26] 47 U.S.C. §161(a)(1). *See also* Phase 2 Order, para. 1.

foreign communication service). Likewise, other regulatory accounting requirements were not added in the Phase 2 Order – despite the requests of certain states – because the Commission found there was no need to add them.[27] In a different proceeding, then-Commissioner Powell has also made clear that the burden is on the Commission "to re-assess and re-validate . . . [a] rule under either Section 11's biennial review or Section 10's forbearance authority" and that the Commission "must be prepared . . . to make a compelling and convincing case that . . . [a] rule must be kept," noting that if the Commission cannot make such a case, the Commission "must modify or eliminate" the rule.[28] Likewise, the courts have addressed the Commission's "duty to examine critically [a rule] . . . and to retain it only if it continued to be necessary."[29]

The Joint Conference has presented for comment whether certain accounts should be added for reporting by ILECs.[30] USTA reiterates and re-emphasizes that no new regulatory accounting requirements should be imposed on ILECs,[31] particularly requirements that would be implemented solely for the benefit of the states. Again, implementing regulatory accounting requirements solely for the benefit of the states would be in contravention of the Commission's regulatory authority and reach. In fact, the Commission has already addressed the requests of states to implement and maintain accounting requirements that would solely benefit them in their promotion of local competition.[32] The Commission has succinctly stated that if it "cannot

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[27] *See* Phase 2 Order, paras. 57-75.

[28] *See 1998 Biennial Regulatory Review – Spectrum Aggregation Limits for Wireless Telecommunications Carriers; Cellular Telecommunications Industry Association's Petition for Forbearance from the 45 MHz CMRS Spectrum Cap; Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Act; Regulatory Treatment of Mobile Services*, Notice of Proposed Rulemaking, WT Docket Nos. 98-205 and 96-59 and GN Docket No. 93-252, 13 FCC Rcd 25132, 25177 (1998) (Separate Statement of Commissioner Michael Powell).

[29] *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1043 (D.C. Cir. 2002).

[30] *See* Public Notice at 3-4 (the Public Notice indicates that some states have requested the addition of the following accounts to the USOA: optical switching, switching software, loop and interoffice transport, interconnection – revenue, interconnection – expense, universal service support revenue, and universal service support expense).

[31] *See infra*, pp. 7-8.

[32] *See* Phase 2 Order, para. 207 (emphasis added).

identify a *federal need* for a regulation, . . . [it is] not justified in maintaining such a requirement at the federal level."[33] In short, the Commission must demonstrate that a rule is necessary – necessary to effectuate a federal need, not a state need – or else the Commission must eliminate that rule. There is no need to revisit now what the Commission has already made clear regarding the elimination and streamlining of certain rules in the Phase 2 Order and what is in compliance with the Act. The Commission has no authority to implement or maintain regulatory requirements solely for the benefit of the sates. Information that is solely for the benefit of the states must be derived from information gathered by the states or other publicly available sources.

USTA encourages the states to streamline their accounting regulations in a similar manner to the streamlining efforts undertaken by the Commission in its Phase 2 Order and those still under consideration in the Phase 3 proceeding. Such action by the states would significantly reduce burdens on carriers. However, under no circumstances should the Commission expand its federal accounting regulations to accommodate the specific needs of the states. Not only is such action is beyond the scope of the Commission's regulatory authority, but such action would unreasonably increase regulatory burdens on carriers, requiring them to provide accounting information in states where no such information has been requested or is needed. Most importantly, increasing ILECs' regulatory accounting requirements solely for the benefit of the states is contrary to the deregulatory goal of the Act and serves no federal regulatory purpose.

CONCLUSION

For the foregoing reasons, USTA urges the Joint Conference to refrain from recommending to the Commission reinstatement or reconsideration of regulatory accounting

[33] Phase 2 Order, para. 207.

requirements that it previously eliminated or streamlined or addition of new regulatory accounting requirements. USTA urges the Joint Conference to encourage the Commission to move forward with its deregulatory efforts on accounting requirements in Phase 3 of the proceeding on regulatory accounting requirements.

Respectfully submitted,

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January 31, 2003

CERTIFICATE OF SERVICE

I hereby certify that a copy of USTA's Petition for Partial Reconsideration and Clarification was served on this 31st day of January 2003 by electronic delivery or first class, postage prepaid mail to the persons listed below.

By: Robin E. Tuttle
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